

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) Cr. No. 04-10319-WGY
)
)
NOEL HERNANDEZ)
Defendant)

GOVERNMENT'S MOTION FOR CONTINUANCE OF SUPPRESSION HEARING AND
TRIAL DATE AND REQUEST FOR EXCLUSION OF TIME

The United States, by its attorneys, Michael J. Sullivan, United States Attorney, and William F. Bloomer, Assistant U.S. Attorney, respectfully moves this Court to continue the dates of the suppression hearing and trial date to a date in the latter part of June, 2005. As grounds for this motion, the government states as follows:

1. A hearing on the Defendant's Motion to Suppress Out-of-Court and In-Court Identifications is presently scheduled for April 27, 2005, at 2:00 p.m.; the trial is scheduled for May 9, 2005.

2. The undersigned prosecutor is cross-designated as a Special Assistant Attorney General for the Commonwealth of Massachusetts, and in that capacity is designated lead prosecutor in the case of Commonwealth v. Timothy White, Dedham Superior Court Docket No. 03-0154-001 thru -012, a custody case of over two years in which the defendant, a sergeant with the Massachusetts State Police, is charged with stealing more than

one-dozen kilograms of cocaine, marijuana and ecstasy from the State Police Narcotics Inspection Unit and distributing a portion of it during the course of a conspiracy with several other individuals. White was arrested after he jammed his service weapon in his wife's mouth and physically abused her in front of his two young daughters. The case is scheduled for trial on May 2, 2005, in Dedham Superior Court, and Justice Judith Fabricant has specially reserved a courtroom for trial in this matter, which is expected to last between 2 and 3 weeks. Plea negotiations in this case fell apart on Monday afternoon (04/04/05), and the undersigned prosecutor will need time to prepare for this trial. It is anticipated that between 30 and 40 witnesses will be called to testify.

3. A key witness in the case against Hernandez was recently transferred from MCI Walpole to Fort Devens for a mental health evaluation and any prescribed follow-up treatment. It is not known at this time whether his condition will permit him to testify at trial in this court on May 9, 2005.

4. I have conferred this matter pursuant to Local Rule 7.1A(2) with the attorney for Hernandez, Peter C. Horstmann, Esq., who has indicated that he assents to the continuance. Attorney Horstmann has informed me that he needs additional time as well to investigate discovery (in the form of telephone records) recently provided to the defense. Hernandez has been

released from custody while awaiting trial on pretrial conditions.

5. On December 13, 2005, this Court entered an Order on Excludable Delay under the Speedy Trial Act as to Hernandez excluding the time from that date through May 9, 2005 (the date of trial). It is respectfully requested that the Court exclude the additional time from May 9, 2005, until the new date set for trial, if this Motion is granted, under 18 U.S.C. §§ 3161(h).

6. The parties request a date for hearing on the suppression motion in the latter part of June 2005, because Attorney Horstmann is scheduled for trial in Suffolk Superior Court on June 6, 2005 (which is expected to last approximately one week), and the undersigned prosecutor will be out-of-state from June 7, 2005 through June 12, 2005, and anticipates being out of the office on vacation from June 12 through Jun 15, 2005.

WHEREFORE, the United States respectfully requests an continuance of the dates of the suppression hearing and trial to the latter part of June, 2005.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/William F. Bloomer
WILLIAM F. BLOOMER
Assistant U.S. Attorney